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5 Attorneys for Defendants  
CHURCHILL COUNTY AND  
6 BENJAMIN TROTTER

7 **UNITED STATES DISTRICT COURT**  
8  
**DISTRICT OF NEVADA**

9  
10 MICHAEL ERWINE,

11 Plaintiff,

12 vs.

13 CHURCHILL COUNTY, a political subdivision  
14 of the State of Nevada; CHURCHILL COUNTY  
15 SHERIFF BENJAMIN TROTTER; and DOES 1  
through 10 inclusive,

CASE NO. 3:18-cv-00461-RCJ-CSD

**DEFENDANTS' SUPPLEMENTAL**  
**JURY INSTRUCTIONS**

16 Defendants.  
17

18 COME NOW Defendants, CHURCHILL COUNTY and BENJAMIN TROTTER, by and  
19 through their attorneys of record, Thorndal Armstrong Delk Balkenbush & Eisinger, and in  
20 accordance with the Court's Amended Order Regarding Trial (Doc. No. 143), hereby submit  
21 Defendants' supplemental jury instructions.  
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1 There are rules of evidence that control what can be received into evidence. When a  
2 lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks  
3 that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the  
4 objection, the question may be answered, or the exhibit received. If I sustain the objection, the  
5 question cannot be answered, and the exhibit cannot be received. Whenever I sustain an  
6 objection to a question, you must ignore the question and must not guess what the answer  
7 might have been. Sometimes I may order that evidence be stricken from the record and that  
8 you disregard or ignore that evidence. That means when you are deciding the case, you must  
9 not consider the stricken evidence for any purpose.  
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Jury Instruction No. \_\_\_\_\_

1           The Plaintiff seeks to establish liability against Ben Trotter for the alleged deprivation of  
2 a liberty interest without adequate process under the Fourteenth Amendment of the United States  
3 Constitution and Article 1, Section 8(5) of the Nevada Constitution. In order to establish this  
4 claim, the plaintiff must prove the following elements by a preponderance of the evidence:  
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- 6           1.       That the plaintiff was terminated from his employment in conjunction with a  
7 stigmatizing statement;
- 8           2.       That the stigmatizing statement impaired the plaintiff's reputation for honesty or  
9 morality; and,
- 10          3.       That the stigmatizing statement was so severe as to have effectively excluded the  
11 plaintiff completely from his chosen profession.
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Jury Instruction No. \_\_\_\_\_

Authorities: *Board of Regents v. Roth*, 408 U.S. 564, 573 (1972); *Tippetts v. Kulangoski*, 567 F.3d 529, 535-36 (9<sup>th</sup> Cir. 2009) and *Blantz v. California Dep't of Corr. & Rehab., Div. of Corr. Health Care Servs.*, 727 F.3d 917, 925 (9<sup>th</sup> Cir. 2013)

1           The Plaintiff seeks to establish liability against Ben Trotter for the alleged deprivation of  
2 a liberty interest without adequate process under the Fourteenth Amendment of the United States  
3 Constitution and Article 1, Section 8(5) of the Nevada Constitution. In order to establish this  
4 claim, the plaintiff must prove the following elements by a preponderance of the evidence:

- 5           1.       That the plaintiff was terminated from his employment in conjunction with a  
6 stigmatizing statement;
- 7           2.       That the stigmatizing statement impaired the plaintiff's reputation for honesty or  
8 morality; and,
- 9           3.       That the stigmatizing statement was so severe as to have effectively excluded the  
10 plaintiff completely from his chosen profession.

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28       Jury Instruction No. \_\_\_\_

1 Stigmatizing statements that merely cause reduced economic returns and diminished  
2 prestige, but not permanent exclusion from, or protracted interruption of, gainful employment  
3 within the plaintiff's trade or profession do not constitute a deprivation of liberty.  
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28 Jury Instruction No. \_\_\_\_\_

Authorities: *Blantz v. California Dep't of Corr. & Rehab.*,  
*Div. of Corr. Health Care Servs.*, 727 F.3d 917, 925 (9<sup>th</sup>  
Cir. 2013)

1 Stigmatizing statements that merely cause reduced economic returns and diminished  
2 prestige, but not permanent exclusion from, or protracted interruption of, gainful employment  
3 within the plaintiff's trade or profession do not constitute a deprivation of liberty.

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Jury Instruction No. \_\_\_\_\_

If you find that the Defendants made a stigmatizing statement about the plaintiff, the plaintiff must also prove the following elements by a preponderance of the evidence:

1. That the accuracy of the charge is contested;
2. That there is some public disclosure of the false, stigmatizing charge;
3. That the charge was made in connection with the plaintiff's termination from employment;
4. That the employer failed to allow the plaintiff an opportunity to refute the veracity of the charge; and,
5. That the plaintiff sustained damages as a result of the defendants' conduct.

Jury Instruction No. \_\_\_\_\_

Authorities: *Mustafa v. Clark County Sch. Dist.*, 157 F.3d 1169, 1179 (9<sup>th</sup> Cir. 1998).

If you find that the Defendants made a stigmatizing statement about the plaintiff, the plaintiff must also prove the following elements by a preponderance of the evidence:

- 1        1. That the accuracy of the charge is contested;
- 2        2. That there is some public disclosure of the false, stigmatizing charge;
- 3        3. That the charge was made in connection with the plaintiff's termination from  
employment;
- 4        4. That the employer failed to allow the plaintiff an opportunity to refute the veracity  
of the charge; and,
- 5        5. That the plaintiff sustained damages as a result of the defendants' conduct.

Jury Instruction No. \_\_\_\_\_

1           In order to establish a claim of defamation, the plaintiff must prove the following  
2 elements by a preponderance of the evidence:

- 3           1.       That Ben Trotter made a false and defamatory statement of fact concerning the  
4 plaintiff;
- 5           2.       An unprivileged publication of this statement was made to a third person;
- 6           3.       That Ben Trotter made the statement with knowledge of its falsity or reckless  
7 disregard for its truth; and,
- 8           4.       That the plaintiff sustained actual damages as a result of the statement.

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28          Jury Instruction No. \_\_\_\_\_

Authorities: *Posadas v. City of Reno*, 109 Nev. 448, 453-454, 851 P.2d 438, 442-43 (1993) and NJI 6.10

1           In order to establish a claim of defamation, the plaintiff must prove the following  
2 elements by a preponderance of the evidence:

- 3           1.       That Ben Trotter made a false and defamatory statement of fact concerning the  
4 plaintiff;
- 5           2.       An unprivileged publication of this statement was made to a third person;
- 6           3.       That Ben Trotter made the statement with knowledge of its falsity or reckless  
7 disregard for its truth; and,
- 8
- 9           4.       That the plaintiff sustained actual damages as a result of the statement.

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28          Jury Instruction No. \_\_\_\_\_

1 A defamatory communication is made in reckless disregard of its falsity if the defendant  
2 entertained serious doubts as to the truth of the communication or had a high degree of  
3 awareness of the communication's probable falsity.  
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Jury Instruction No. \_\_\_\_\_

Authorities: *Posadas v. City of Reno*, 109 Nev. 448, 454, 851 P.2d 438, 443 (1993)

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2 entertained serious doubts as to the truth of the communication or had a high degree of  
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28 Jury Instruction No. \_\_\_\_\_

1           It is the duty of the Court to instruct you about the measure of damages. By instructing  
2 you on damages, the Court does not mean to suggest for which party your verdict should be  
3 rendered.

4           If you find for the plaintiff, you must determine the plaintiff's damages. The plaintiff has  
5 the burden of proving his damages by a preponderance of the evidence. Damages means the  
6 amount of money that will reasonably and fairly compensate the plaintiff for any injury you find  
7 was caused by the defendants. You should consider the following:

8           The reasonable value of the damage to the plaintiff's reputation.

9           It is for you to determine what damages, if any, have been proved.

10          Your award must be based upon evidence and not upon speculation, guesswork or  
11 conjecture.

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Jury Instruction No. \_\_\_\_\_

Authorities: NCJI 5.1

1           It is the duty of the Court to instruct you about the measure of damages. By instructing  
2 you on damages, the Court does not mean to suggest for which party your verdict should be  
3 rendered.

4           If you find for the plaintiff, you must determine the plaintiff's damages. The plaintiff has  
5 the burden of proving his damages by a preponderance of the evidence. Damages means the  
6 amount of money that will reasonably and fairly compensate the plaintiff for any injury you find  
7 was caused by the defendants. You should consider the following:

8           The reasonable value of the damage to the plaintiff's reputation.

9           It is for you to determine what damages, if any, have been proved.

10          Your award must be based upon evidence and not upon speculation, guesswork or  
11 conjecture.

12          Jury Instruction No. \_\_\_\_\_

1 Verdict forms have been prepared for you. After you have reached unanimous agreement  
2 on a verdict, your foreperson should complete that verdict form which reflects your  
3 deliberations, sign and date it, and advise the clerk that you are ready to return to the courtroom.  
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Jury Instruction No. \_\_\_\_\_

Authorities: NCJI 3.5 (modified to reflect plural verdict forms to be presented to jury).

1 Verdict forms have been prepared for you. After you have reached unanimous agreement  
2 on a verdict, your foreperson should complete that verdict form which reflects your  
3 deliberations, sign and date it, and advise the clerk that you are ready to return to the courtroom.  
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Jury Instruction No. \_\_\_\_\_

1       In a §1983 action, the plaintiff must demonstrate that the defendants' conduct was the  
2 cause of the claimed injury.

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28     Jury Instruction No. \_\_\_\_\_

Authorities: *Harper v. City of Los Angeles*, 533 F.3d 1010, 1026 (9<sup>th</sup> Cir. 2008); see also, comments to NCJI 9.2

1       In a §1983 action, the plaintiff must demonstrate that the defendants' conduct was the  
2 cause of the claimed injury.

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28 Jury Instruction No. \_\_\_\_\_

DATED this 10<sup>th</sup> day of February, 2022.

1  
2 THORNDAL ARMSTRONG  
3 DELK BALKENBUSH & EISINGER

4 By: 

5 Katherine F. Parks, Esq.  
6 State Bar No. 6227  
7 6590 S. McCarran Blvd., Suite B  
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kfp@thorndal.com  
Attorneys for Defendants  
Churchill County and  
Benjamin Trotter

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**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b), I certify that I am an employee of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and that on this date I caused the foregoing **DEFENDANTS' SUPPLEMENTAL JURY INSTRUCTIONS** to be served on all parties to this action by:  
\_\_\_\_ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

- United States District Court, District of Nevada CM/ ECF (Electronic Case Filing)

personal delivery

facsimile (fax)

Federal Express/UPS or other overnight delivery

fully addressed as follows:

Luke Busby, Esq.  
316 California Ave., #82  
Reno, NV 89509  
*Attorney for Plaintiff*

DATED this 10 day of February, 2022.

An employee of THORNDAL ARMSTRONG  
DELK BALKENBUSH & EISINGER